

**United States Department of Labor
Employees' Compensation Appeals Board**

K.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Long Beach, CA, Employer**

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**Docket No. 07-229
Issued: May 1, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 8, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' nonmerit decision dated May 22, 2006 denying reconsideration. As the most recent merit decision of record is dated May 5, 2005, more than one year from the filing of this appeal, the Board lacks jurisdiction to review the merits of appellant's claim.¹ Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the May 22, 2006 nonmerit decision.

ISSUE

The issue is whether the Office properly denied appellant's request for a review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

¹ 20 C.F.R. §§ 501.2(c) and 501.3.

FACTUAL HISTORY

On January 12, 1985 appellant, then a 56-year-old custodian, filed an occupational disease claim alleging that her emotional distress and physical conditions were a result of discrimination at the employing establishment over the prior six years. She indicated that she accepted a switchboard operator position in 1976 and she was placed in a custodial position in 1984. Appellant was separated from service in 1986. The Office accepted the claim for adjustment disorder and placed appellant on the compensation rolls. By decision dated May 5, 2005, the Office terminated appellant's compensation for wage loss and medical benefits effective that day. It found that the weight of the medical opinion evidence rested with the October 4, 2004 report of the impartial medical examiner, Dr. S. David Glass, a Board-certified psychiatrist, who opined that appellant was no longer disabled because of stress from a job she had not worked since 1985.

Following the Office's May 5, 2005 decision, the Office received a duplicative report from Dr. Lynn K. Friedman, a Board-certified psychiatrist, dated April 26, 2005.

In a May 4, 2006 letter, appellant disagreed with the Office's May 5, 2005 decision and requested reconsideration. She indicated that she was providing an independent psychological examination, assessment and report from Dr. Lila McQueen, a clinical psychologist. However, the Office did not receive a report from Dr. McQueen.

By decision dated May 22, 2006, the Office denied appellant's request for reconsideration.²

LEGAL PRECEDENT

Under section 8128(a) of the Federal Employees' Compensation Act,³ the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.⁴ Section 10.608(b) provides that, when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁵

² The Office received additional evidence following its May 22, 2006 decision. This included a May 30, 2006 fax transmission containing an April 30, 2006 report from Dr. McQueen, a clinical psychologist. The Board, however, cannot review this evidence as its review of the case is limited to that evidence which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(2).

⁵ *Id.* at § 10.608(b).

ANALYSIS

Appellant's May 4, 2006 request for reconsideration neither alleged, nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, she did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant was not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).⁶

With respect to the third requirement, submitting relevant and pertinent new evidence not previously considered by the Office, the record contains an April 26, 2005 report by Dr. Friedman, which was previously of record and considered by the Office. Material which is cumulative or duplicative of that already in the record has no evidentiary value in establishing the claim and does not constitute a basis for reopening a case for further merit review.⁷ Although appellant advised in a May 4, 2006 letter that she was submitting a report from Dr. McQueen, such report was not received prior to the Office's decision.⁸ Consequently, she is not entitled to a review of the merits of her claim based on the third above-noted requirement under section 10.606(b)(2).⁹

Appellant neither showed that the Office erroneously applied or interpreted a point of law; advanced a point of law or fact not previously considered by the Office; nor did she submit relevant and pertinent evidence not previously considered by the Office.¹⁰ Accordingly, the Board finds that the Office properly determined that appellant was not entitled to a merit review.¹¹

⁶ *Id.* at § 10.606(b)(2)(i) and (ii).

⁷ *Betty A. Butler*, 56 ECAB ____ (Docket No. 04-2044, issued May 16, 2005); *Daniel M. Dupor*, 51 ECAB 482 (2000).

⁸ *See supra* note 2.

⁹ 20 C.F.R. § 10.606(b)(2)(iii).

¹⁰ *Id.* at § 10.606(b).

¹¹ *See James E. Norris*, 52 ECAB 93 (2000).

CONCLUSION

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the May 22, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 1, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board